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Deeds and Disposal Documents

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Outline

- Disposal Documents
- Components of a Deed
- Army Conveyances
- Parts of the Deed
- Authorities
- Condition vs. Covenant
- Questions

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Disposal Document

- **Disposal document**
  - The document used to effectuate a disposal
  - “Conveyance” means a written instrument
  - Immovable or Real Property
  - Type depends on estate and type of grantee
  - This term is a generic term and can include:
    - Quitclaim Deed
    - Easements
      - Release of Easement
      - Renunciation of Servitude
      - Affidavit of Abandonment or Non-use
      - Assignment of Easement
    - Bill of Sale – improvements w/o land
    - Bill of Sale – sand, gravel, water, or timber (some states require a Timber Deed)
    - DD 1354 - transfer
    - Memorandum – transfer to another agency
    - SF 118, Report of Excess

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Decision Documents

- **Decision documents approving disposal**
  - Determination of Excess
  - Determination Approving Disposal
  - Disposal Report
  - DA Form 337, for improvements

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Disposal Documents

- **Recordation Statute**
  - Format of Documents to be recorded
- **Conveyance Statute**
  - Type of document for a valid conveyance
  - Civil system
  - Common Law system
- Majority of states have recordation statutes

- Title based on
  - Title Registration or Torrens System – Court issues Certificate of Title
  - Recording System
    - Chain of Title – Title Insurance
    - “Race” to record
    - “Notice”
- Legal Description
  - Metes and bounds
  - Sectional system

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Army Fee Conveyance

- Convey by Quitclaim Deed
- Called Deed Without Warranty in some states
  - conveyance by warranty deed not delegated.
- In Louisiana/civil – Written instrument transfers immovable property - can be deed format, convey not “grant”
- Approval from CECC-R before executing warranty deeds:
  - Warranty deed may be necessary in order to obtain a reasonable price for the property, to render the title marketable, or for any other reason
  - Give full explanation & recommendations
- Exception: authorizing legislation specifically requires conveyance by warranty deed.

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Army Fee Conveyance

- Model Deed format, dated 10 Jan 05
- Transmittal must contain Checklist w/deviations noted
- Include format deviations required by local law
  - execution of documents,
  - witnesses,
  - acknowledgments,
  - authentication of acknowledgments, or
  - other matters that are applicable to the case
- Do not ask for Seal unless required by state law

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Conveyance of Easement

- Assignment or transfer
  - To another Gov entity
  - Not serviant estate holder
- Release of Easement to serviant estate holder
  - Release of entire easement
  - Release of certain restriction
- Affidavit of abandonment or non-use
  - Can cover more than one ownership
    - e.g. road no longer used
- Renunciation of servitude
    - e.g. Louisiana
- Only has to be a deed if required by state law

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Components of Deeds

- A Deed is a written instrument, signed, sealed and delivered by the parties conveying title to interests in land or an estate
- Valid Deed must
  - identify parties,
  - recite consideration,
  - contain words of conveyance,
  - describe with specificity the property,
  - be witnessed (if state requires),
  - be acknowledged (if state requries) and
  - be delivered by the grantor to the grantee.

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Components of Deeds

- Deed format varies by state, with common elements:
  - **Premises**:
    - Date – appears in opening paragraph or near signature in the Testimonium
    - Name of parties,
    - Authority,
    - Consideration,
    - Operative words, or Words of conveyance , e.g. grant, bargain, sell, quitclaim,
      - Conveyance creates an interest, e.g possessory interest, future interest, easement
    - legal description of land,
    - Encumbrance clause
    - Recitals necessary to explain transaction

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Components of Deeds

- Deed format common elements (conti):
  - **Habendum et Tenendum Clause**: Assigns an Estate to interest created by the granting clause, e.g. fee simple absolute, fee on condition, life estate.
  - **Reddendum Clause:** Reservations, Incorporeal and Mineral Interests
  - **Covenants:** Running with the Land
  - **Testimonium: Recitation of execution, date**
  - **Signatures**
  - **Attestation by witnesses**
  - **Acknowledgment**

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Components of Deeds

- Some components are essential for a valid conveyance others applicable only in certain situations.
  - Analyze each transaction before drafting begins so that all of the appropriate elements are included.
    - Difficult to correcting omissions and other errors after a deed has been executed
    - Can sometimes require a new conveyance by different parties, e.g. original party is deceased or no longer has the legal capacity required to execute a corrective deed.
- It is important deeds be technically correct in all respects before they are executed.
- State requirements must be met

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Parts of the Deed

- Heading

QUITCLAIM DEED

PROJECT/ INSTALLATION

COUNTY, STATE

TRACT NOS.

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Parts of the Deed [tailor to local requirements]

- Premises
- Names of the Parties
  - Grantor (citing Statutory Authority)
  - Grantee
  - Recitals

This **QUITCLAIM DEED,** between the U**NITED STATES OF AMERICA** (herinafter “Grantor”), acting by and through the Deputy Assistant Secretary of the Army (Installations & Housing), pursuant to a delegation of authority from the SECRETARY OF THE ARMY (hereinafter the "ARMY"), under the authority of [cite authority], and [**NAME OF GRANTEE** , MARITAL STATUS, ADDRESS], herinafter the “Grantee[s]”.

WITNESSETH THAT:

WHEREAS, [U***se minimally, if at all. Include conditions precedent to the transfer; Only information necessary to ensure clear land records – No Exhibits]***

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Parts of the Deed

- Premise (continued)
  - Consideration
  - Lack of Warranty/ Operative Words

NOW THEREFORE, the GRANTOR, for and in consideration of _____ DOLLARS ($000.00), cash in hand paid, and other good and valuable consideration, the receipt of all of which is hereby acknowledged, does hereby **REMISE, RELEASE and FOREVER QUITCLAIM** unto the Grantee[s], its successors and assigns, all its right, title and interest in the property situated, lying and being in the County of ____, in the State of ____ , *(if Condition on title, it can be repeated "so long as the premises are used as an . . . .")*

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Parts of the Deed

- Premise

(continued)

- Legal Description

- Encumbrances clause

containing approximately _____ acres as shown on Exhibit A, attached hereto and made a part hereof (hereinafter referred to as the "Property")

LEGAL DESCRIPTION

(Usually single spaced with double spacing between paragraphs; indented on both sides.

*Description **must** conclude with a derivation clause citing the source of title of the United States for **all** interest conveyed)*

SUBJECT TO all valid and existing restrictions, reservations, covenants, conditions, and easements, ...

*(include **pre**-existing legal interest not included in the conveyance)*

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Parts of the Deed

- Habendum

TO HAVE AND TO HOLD the property granted herein to the Grantees, (if applicable, as joint tenants and not as tenants in common), and its successors and assigns, together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, or claim whatsoever of the GRANTOR, either in law or in equity and subject to the terms, reservations, restrictions, covenants, and conditions set forth in this Deed.

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Parts of the Deed

- Reddendum
  - If Applicable
- Tenendum
  - Not used in most states
  - Tenements – buildings
  - Hereditaments – inheritable property

RESERVING unto the Grantor, the **UNITED STATES OF AMERICA,** the right to flood… a 30-foot easement ….access… minerals

TOGETHER with all the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining. (not used much)

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Parts of the Deed

- Condition

  S (If Applicable)

PROVIDED, HOWEVER, that if any portion of the premises shall be used for any purpose other than _____ [the purpose designated], the title and interest in and to the portion of the premises so used shall revert to and become the property of the United States, at its option, and it shall have the immediate right of entry (OPTIONAL).

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Parts of the Deed

- Covenants

AND IT IS FURTHER AGREED AND UNDERSTOOD by and between the parties hereto that the GRANTEE, by its acceptance of this Deed, agrees that, as part of the consideration for this Deed, the GRANTEE covenants and agrees for itself, its successors and assigns, forever, that this Deed is made and accepted upon each of the following covenants, which covenants shall be binding upon and enforceable against the GRANTEE, its successors and assigns, in perpetuity by the United States and other interested parties as allowed by federal, state or local law;

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Parts of the Deed

- Covenants (continued)

that the NOTICES, USE RESTRICTIONS, AND RESTRICTIVE COVENANTS set forth here are a binding servitude on the Property herein conveyed and shall be deemed to run with the land in perpetuity; and that the failure to include the NOTICES, USE RESTRICTIONS, AND RESTRICTIVE COVENANTS in subsequent conveyances does not abrogate the status of these restrictions as binding upon the parties, their successors and assigns:

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Parts of the Deed

- Environmental Covenants, Notices and EPPs from the Finding of Suitability to Transfer (FOST)

1. **CERCLA NOTICE**
2. **CERCLA COVENANT**
3. **RIGHT OF ACCESS**
4. **“AS IS”**
5. **HOLD HARMLESS**
6. **POST-TRANSFER DISCOVERY OF CONTAMINATION**
7. **ENVIRONMENTAL PROTECTION PROVISIONS [from FOST].**

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Parts of the Deed

- Covenants and Restrictions
- Optional – not mandatory
- Include only if apply

8. NOTICE OF WETLANDS

9. NOTICE OF HISTORIC PROPERTY AND PRESERVATION COVENANT

10. NOTICE OF ARCHEOLOGICAL PROPERTY AND PRESERVATION COVENANT

12. ENDANGERED SPECIES ACT

13. PROXIMITY OF AIRPORT

14. NON-DISCRIMINATION

15. INDEMNIFICATION OF TRANSFEREES OF CLOSING DEFENSE PROPERTY

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Parts of the Deed

- Anti-Deficiency clause
- Mandatory

16. ANTI-DEFICIENCY ACT

The GRANTOR's obligation to pay or reimburse any money under this Deed is subject to the availability of funds appropriated for this purpose to the Department of the Army, and nothing in this Deed shall be interpreted to require obligations or payments by the GRANTOR in violation of the Anti-Deficiency Act, 31 U.S.C. §1341.

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Parts of the Deed

- No Waiver clause
- Mandatory

17. NO WAIVER

The failure of the Government to insist in any one or more instances upon complete performance of any of the said notices, covenants, conditions, restrictions, or reservations shall not be construed as a waiver or a relinquishment of the future performance of any such covenants, conditions, restrictions, or reservations; but the obligations of the GRANTEE, its successors and assigns, with respect to such future performance shall continue in full force and effect.

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Parts of the Deed

- Testimonium

IN WITNESS WHEREOF, the GRANTOR has caused this Deed to be executed in its name by the Deputy Assistant Secretary of the Army for Installations and Housing (I&H)), this the _____ day of _____ 200_.

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Parts of the Deed

- Signatures
- Attestation

(Witness and seal are optional – only if required by state law)

UNITED STATE OF AMERICA

By:_____

JOSEPH W. WHITAKER

Deputy Assistant Secretary of the Army

(Installations and Housing)

OASA(I&E)

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General Authority

- Federal Property and Administrative Services Act – DOD delegation

- the Federal Property and Administrative Services Act, as amended, 40 U.S.C. §101, et seq., and the delegation of authority to the Secretary of Defense from the Administrator of the General Services Administration (41 C.F.R. 102-75.1055) and the redelegation of authority from the Secretary of Defense to the Secretary of the Army (20 Federal Register 7113),

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Special Authorities

- Case Specific
- Continuing Authorities
  - Cottage Sites
  - Port and Industrial
  - BRAC
  - Airport
  - Highway purposes
  - Wildlife
  - Public Benefit

- The powers and authority contained in the Act of Congress approved ____ (Public Law ___; Stat.)
- Cottage Site - P.L. 84-999 (16 U.S.C. 460e).
- Port and industrial – Section 108 of the Act of Congress approved July 14. 1960 (Public Law 86-645, 74 Stat. 486) 33 U.S.C. 578
- BRAC
- Airport, 49 U.S.C. 47110 or 50 U.S.C. 1622(g)
- Highway- 23 U.S.C. 317 or 40 U.S.C. 345c
- Wildlife - 16 U.S.C. 667b
- Public Benefit, various

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Condition vs. Covenant

- A covenant is a promise or agreement, and violation gives rise to action for damages or injunctive relief

- A condition affects title
- Remedy is a forfeiture of title.

General rule is that intention of the parties controls, but if not clear, the clause will be construed as a covenant since this does not put title in question. Use of the terms will be given effect if consistent with the purpose of he instrument viewed in its entirety.

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Condition

- **Conditions place limitations on duration of the interest:**
  - **Precedent – event must occur before title vest**
  - **Subsequent – event will terminate possession or use**
  - **Special limitation – continue possession or use while special situation persists**
- **Convey less than own, operates to retain a reversion of the part not conveyed**
- **Convey full estate but retain reversionary interest: either possibility of reverter (title reverts upon event) or right of entry (action must be taken)**
- **DA policy is to only do special limitations or right of entry**
  - **Requires action to take back title – not automatic**
  - **Title was in USA, not DA so title reverts to USA**
  - **GSA and DOJ decide on action, not DA unless specifically stated**
  - **DOI has authority under 43 USC 1745 to give a release**

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Covenant

- Covenants can be personal or run with the land., express (stated) or implied (by law).
- A covenant runs with the land when either the liability to perform or the right to take advantage of of it passes to the next grantee.

- A personal covenant is between the parties
  - Should be in a Contract to Sell
- Deed should not contain items that do not run with the land

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Validity of Transfer Documents

- 40 USC Sec. 544. Validity of transfer instruments
  - A deed, bill of sale, lease, or other instrument
  - executed by or on behalf of an executive agency
  - purporting to transfer title or other interest in surplus property
  - is conclusive evidence of compliance with the provisions of Chapter 5, Title 40
  - concerning title or other interest of a bona fide grantee or transferee for value and without notice of lack of compliance.
- For example, general policy to reserve minerals
  - If deed fails to reserve minerals, we conveyed what we owned
  - Policy will not overcome deed.
  - So once recorded, it is presumed to convey as stated.

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Processing Deeds and Determinations

- RIT receives a Disposal Package
  - With Deed
  - With Determination [either (1) of Excess or (2) to Approve Disposal under authority other than FPASA] if not previously approved
  - Long standing policy is that GRANTEE must execute before DASA. If there are reasons why this was not done, then package should explain
  - With Checklist showing deviations from model, how options were selected, and blanks filled in
- Realty Specialist reviews package for gaps, completeness, and overall issues
- CECC-R attorney provides real estate legal reviews and approves for legal sufficiency

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Processing Deeds and Determinations

- RIT staff prepares the memo to DASA.
  - Brief executive summary of the action
  - Recommendation - why USACE recommends disposal and recommendation that DASA execute the deed [and Determination]
  - Memo signed by the Director, Real Estate.
  - COORDINATION paragraph before RECOMMENDATION.
  - If Civil, states that the action has been coordinated with the OASA(CW) - don't use name in memo –
    - MEMO does not go *through* ASA(CW) unless for some reason, the ASA(CW) should chop on it, or if requested by OASA(CW)

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Processing Deeds and Determinations

- RIT Memo [continued]
  - Memo has to state which attorney in the District and in HQ did review for legal sufficiency.
    - If for some reason, this was not done, there had better be a good explanation - so explain.
  - Memo must either attach Disposal Report or state where the Report is, i.e. previously submitted.
  - The Determination must be mentioned in our Memo - if DASA is being asked to execute, so state; if signed by some other official, state that; if executed by DASA at earlier date, attach copy

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Questions??